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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,687	01/22/2004	Stuart Bassine	MRS109	5252
7590		12/16/2005	EXAMINER	
William E. Noonan		TRIEU, THERESA		
Post Office Box 07338		ART UNIT		
Fort Meyers, FL 33919		PAPER NUMBER		
		3748		

DATE MAILED: 12/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/762,687

Applicant(s)

BASSINE, STUART

Examiner

Theresa Trieu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16 and 17 is/are allowed.
- 6) ☒ Claim(s) 1,3-12,14,15,18 and 19 is/are rejected.
- 7) ☒ Claim(s) 2, 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/22/2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "interconnect port 20" (see Fig. 1); "rotor 140; direction of arrow 66; headed arrows 190; over lines 88 and 80 " (see Fig. 3); "12c, 14c" (see Fig. 8). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6 and 8 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6 and 11 of U.S. Patent No. 6,749,405. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 6 and 11 of the patent “anticipates” application claims 6 and 8. Accordingly, application claims 6 and 8 are not patentably distinct from patent claims 6 and 11. Here, patent claims 6 and 11 require elements a nitrogen filter, a reversible pivoting rotary compressor, a reversible motor, a cabinet, a fan while application claims 6 and 8 only requires elements nitrogen filters, a reversible pivoting rotary compressor, a reversible motor. Thus it is apparent that the more specific patent claims 6 and 11 encompasses application claims 6 and 8. Note that since Application claims 6 and 8 are anticipated by patent claims 6 and 11 and since anticipation is the

epitome of obviousness, then application claims 6 and 8 are obvious over patent claims 6 and 11.

*In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

Claims 7, 9-12, 14, 15, 18 and 19 are rejected by virtue of their dependence on claims 6 and 8.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

***4. Claim 1, 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bassine (Patent Number 5,188,524) in view of Okabe (Publication Number JP 60-060201).***

As shown in Fig. 2, Bassine discloses a pivoting vane rotary compressor comprising: a housing (112) and a pair of opposing side walls (118, 119) on respective sides of the peripheral; a rotor (120) mounted within the chamber to define about the rotor a compression chamber (114), which narrows from a main chamber region (114) to a constricted chamber region (114), the rotor having a circumferential surface; at least one intake/exhaust port (128, 130) connected communicably with the chamber (114) proximate respective positions wherein the main chamber region and the constricted chamber region intersect, the ports for respectively introducing gas into the chamber and exhausting gas from the chamber, at least one adjoining pair of curved vanes (170) pivotably attached to the rotor (120) and extending in generally opposite arcuate directions from the rotor into the chamber, and a motor (194) for rotatably driving the rotor (120) such that both of the adjoining vanes (170) are urged simultaneously against the inner wall of the

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chamber to define at least one compartment (200-212) that transmits the gas through the chamber between the intake and exhaust ports (128, 130) and through the main chamber region (114), whereby gas introduced through a selected one of the ports is compressed and discharged through the other port; the pair of ports (128, 130) being oriented about the chamber (114) at equal and opposite radial angles relative to a widest portion of the main chamber region; each compartment (200-212) gradually expanding as the pair of vanes (170) defining the compartment are driven from the constricted region to the main region through the position at which the regions intersect such that a vacuum is drawn in the compartment, which vacuum draws air into the compartment through the port located proximate thereto. However, Bassine fails to disclose the pear-shaped chamber.

Okabe teaches that it is conventional in the art to utilize the pear-shape chamber (see Fig. 1). It would have been obvious to one having ordinary skill in the rotary compressor art at the time the invention was made, to have utilized the pear-shaped chamber, as taught by Okabe in the Bassine apparatus, since the use thereof would have reduced exceedingly the loss of energy. Applicant should also note that it would have been an obvious matter of design choice to utilize the pear-shaped chamber, since it has been held that a change in the shape of the element involves only routine skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1966).

5. *Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bassine '524 in view of Okabe '201 as applied to claim 1 above, and further in view of Bassine (Patent Number 5,968,236).*

The modified Bassine device '524 discloses the invention as recited above; however, the modified Bassine fails to disclose the reversible intake and exhaust ports and the reversible motor.

Bassine '236 teaches that it is conventional in the rotary compressor art to utilize the ports comprise a pair of reversible intake and exhaust ports (16, 18), each port for selectively and alternatively introducing air into the chamber while the other port exhausts air from the chamber and wherein the motor includes a reversible motor (24) for driving the rotor alternatively in opposing first and second directions to transmit in alternating direction through the chamber and between the ports. It would have been obvious to one having ordinary skill in the rotary compressor art at the time the invention was made, to have utilized the reversible intake and exhaust port and the reversible motor, as taught by Bassine '236 in the modified Bassine apparatus, since the use thereof would have improved the efficiency of the rotary compressor and reduced the cost and weight of an oxygen concentrator for using in medical applications.

***Allowable Subject Matter***

6. Claims 2 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 16 and 17 are allowed.

***Prior Art***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and consists of seven patents: Peck (U.S. Patent Number 156,814), Van Ee (U.S. Patent Number 3,807,644), Gauthier et al. (U.S. Patent Number 4,222,750), Kanner et al. (U.S. Patent Number 5,114,441), McCombs (U.S. Patent Number 5,474,595), Leavitt (U.S. Patent Number 5,871,565), and Bassine (U.S. Patent Number 6,371,745), each further discloses a state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa Trieu whose telephone number is 571-272-4868. The examiner can normally be reached on Monday-Friday 8:30am- 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on 571-272-4859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TT  
December 8, 2005

  
Theresa Trieu  
Primary Examiner  
Art Unit 3748